

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

1. MARLIN BAUMGARTEL, AND
2. NADINE BAUMGARTEL,

Plaintiffs,

V.

1. ANDREW FISHER AND
2. FISHER FARMS, INC.,

Defendants.

Case No. 18-cv-85-TCK-FHM

Jury Trial Demanded

COMPLAINT

Plaintiffs Marlin Baumgartel and Nadine Baumgartel, by and through their attorney of record, Brent E. Mayes of DeVaughn James Injury Lawyers, assert the following in support of plaintiffs' Complaint against defendants Andrew Fisher and Fisher Farms, Inc.:

A. VENUE AND JURISDICTION

1. Plaintiffs Marlin and Nadine Baumgartel are residents of Howard, Elk County, Kansas.

2. Defendant Andrew Fisher is a resident of Bristow (Creek County), Oklahoma, and may be served at Defendant's residence at 29323 S. 257th W Avenue, Bristow, Oklahoma, 74010.

3. Defendant Fisher Farms, Inc., is a “for profit” company organized under the State of Oklahoma. It is registered to do business in the State of Oklahoma and may be served through its resident agent Timothy Johnson, 200 N Main St., Bristow, Oklahoma, 74010.

4. This Court has proper venue and jurisdiction over the persons and subject matter.

5. The instant collision occurred on February 24, 2016, in Nowata County, Oklahoma.

6. This action is brought pursuant to 28 U.S.C. Section 1332(a) on the basis of diversity of citizenship. The matter is in excess of the sum of Seventy-Five Thousand and no/100 Dollars (\$75,000.00) exclusive of interest and costs.

7. Venue is proper in this district pursuant to 28 U.S.C. 1391(a)(2) and (c) because a substantial part of the events giving rise to the claims in controversy that arose here.

B. NATURE OF ACTION

8. This is a personal injury action arising out of a motor vehicle collision between a vehicle occupied by plaintiffs and a vehicle owned and operated by the defendant Fisher, who was in the course of his business dealings for defendant Fisher Farms, Inc.

C. ALLEGATIONS OF NEGLIGENCE AND NEGLIGENCE PER SE

9. Defendant Andrew Fisher is listed as the owner of the vehicle and was in the course of his business dealings for Fisher Farms, Inc., when the collision occurred. Defendant Fisher Farms, Inc. is identified as the “insured” in the automobile liability policy.

10. On or about February 24, 2016, Plaintiff Marlin Baumgartel was driving the plaintiffs’ vehicle westbound on Hwy 60 with Plaintiff Nadine Baumgartel as his passenger. Meanwhile, defendant Fisher was traveling northbound on State Highway 28

when he negligently, carelessly, and wantonly failed to yield the right-of-way from a stop sign and collided with the plaintiffs' vehicle.

11. The actions and omissions of Andrew Fisher and Fisher Farms, Inc., (both independently and through Andrew Fisher under Respondeat Superior and Vicarious Liability) are negligent, careless and negligent per se for the following reasons:

- a. Failure to yield the right away at a stop sign;
- b. Inattentive operation of a motor vehicle;
- c. Failure to keep a proper lookout;
- d. Failure to use ordinary care;
- e. Failure to give warning;
- f. Failure to take evasive action; and
- g. Careless operation of a motor vehicle.

12. As a result of the Defendants' negligence, plaintiffs sustained personal injuries and damages. Plaintiffs' damages include, but are not limited to economic losses, future economic loss, loss of wages, past medical expenses, future medical expenses, pain and suffering, loss of enjoyment of life, emotional distress and such other remedies as this Court deems fair, just and equitable.

WHEREFORE, Plaintiffs request judgment against Defendants for an amount in excess of SEVENTY-FIVE THOUSAND (\$75,000.00), together with the costs incurred herein, and for such other and any further relief this Court deems fair, just and equitable.

Respectfully submitted,

DeVaughn James Injury Lawyers

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Attorney for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs request a jury trial on all issues so triable.

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